

Message Text

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PAGE 01 BRASIL 02970 142214Z
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SUBJECT: GEISEL PROMULGATES FIRST PACKAGE OF "REFORMS" UNDER AI-T
AUTHORITY

REF BRASILIA 2966

SUMMARY: PRESIDENT GEISEL ON APRIL 13 PROMULGATED THE
FIRST OF THE SERIES OF INSTITUTIONAL CHANGES TO BE ENACTED
BY EXECUTIVE FIAT FOLLOWING RECESS OF CONGRESS. A NEW CONSTITUTIONAL
AMENDMENT INCORPORATED THE GOVERNMENT'S JUDICIAL REFORM PACKAGE,
SUBSTANTIALLY UNCHANGED FROM THE VERSIONS PREVIOUSLY DEFEATED IN
CONGRESS BY THE MDB. TWO POPULAR PIECES OF SOCIAL LEGISLATION,
WHICH WOULD PROBABLY HAVE PASSED CONGRESS ROUTINELY BY MAJORITY VOTE
IN THE NEAR FUTURE, WERE UNEXPECTEDLY DECREED BY GEISEL, IN A TRANS-
PARENT EFFORT TO ADD A DIMENSION OF BENEVOLENCE TO THE USE OF EXCEP-
TIONAL POWERS AND TO SWEETEN THE HARDLINE POLITICAL REFORMS SOON TO
FOLLOW. END SUMMARY.

1. PRESIDENT GEISEL YESTERDAY (APRIL 13) USED HIS LEGISLATIVE
POWERS ACQUIRED THROUGH RECESS OF CONGRESS UNDER AI-5 TO ENACT THE FIRST
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PAGE 02 BRASIL 02970 142214Z

GROUP OF PROMISED "REFORMS", INCLUDING REFORM OF THE JUDICIARY, AND
--AS A SURPRISE--AN INCREASE IN EMPLOYEES' ANNUAL VACATION TIME AND
AN LIMITED RELIEF MEASURE FOR TENANTS.

2. GEISEL PROMULGATED AS CONSTITUTIONAL AMENDMENT NO.7 A JUDICIAL
REFORM PACKAGE DIFFERING LITTLE FROM THE TWO GOVERNMENT VERSIONS

PREVIOUSLY BLOCKED BY THE MDB MINORITY IN CONGRESS. THE NEW AMENDMENT LEAVES UNTOUCHED THOSE PROVISIONS OF AI-5 SUSPENDING PREVIOUS CONSTITUTIONAL GUARANTEES OF THE JUDICIARY, WHOSE REINSTATEMENT WAS A BASIC MDB CONDITION FOR SUPPORT OF THE BILLS IN CONGRESS. ON THE CONTRARY, THE AMENDMENT INTRODUCES A TWO-YEAR PROBATIONARY PERIOD FOR NEW LOWER COURT JUDGES, THOUGH PROFESSIONAL CONCERNS APPEAR TO UNDERLIE THIS INNOVATION. OTHER CHANGES TO EXISTING PROVISIONS ARE MOSTLY TECHNICAL, ALTHOUGH THERE IS AN UNDERLYING TREND TOWARDS INCREASED UNIFORMITY AND CENTRALIZATION OF THE JUDICIAL SYSTEM, ACHIEVED PARTICULARLY THROUGH A STRENGTHENING OF THE FEDERAL SUPREME COURT (STF). OVER THE OBJECTIONS OF THE MDG, THE STF NOW ACQUIRES THE POWER TO REMOVE TO ITS IMMEDIATE JURISDICTION, PURSUANT TO REQUESTS BY THE FEDERAL ATTORNEY GENERAL, ANY CASE BEFORE LOWER COURTS WHICH ENTAILS THE POSSIBILITY OF "GRAVE INJURY TO ORDER, HEALTH, SECURITY, OR THE PUBLIC FINANCE." THE EFFECTS OF ANY PRIOR JUDICIAL RULING IN SUCH A CASE ARE IMMEDIATELY SUSPENDED. IN ADDITION, THE STF IS GIVEN AUTHORITY TO INTERPRET STATE OR FEDERAL LAWS. PURSUANT TO REQUESTS BY THE FEDERAL ATTORNEY GENERAL UNCONNECTED TO SPECIFIC CASES. THE AMENDMENT ALSO CREATES A NATIONAL COUNCIL OF THE JUDICIARY,

COMPOSED OF SEVEN MEMBERS CHOSEN FROM THE STF, TO ACT AS THE NEW OVERALL DISCIPLINARY ARM OF THE JUDICIARY, WITH RIGHT TO TAKE OVER IMMEDIATE JURISDICTION OF DISCIPLINARY ACTIONS INVOLVING JUDGES OF THE LOWEST COURTS.

3. THE ONLY SUBSTANTIAL CHANGE FROM THE GOVERNMENT'S ORIGINAL PROPOSALS, AND ONE WHICH WAS PUSHED BY THE MDB, IS THE PRESERVATION OF THE TRIBUNAL DE ALCADA, (ROUGHLY EQUIVALENT TO SMALL CLAIMS COURTS), WHICH ARE MAINTAINED BY A NUMBER OF THE MORE POPULOUS BRAZILIAN STATES. LIMITED OFFICIAL USE

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PAGE 03 BRASIL 02970 142214Z

4. IN ADDITION TO THE JUDICIAL REFORM AMENDMENT, GEISEL UNEXPECTEDLY DECREED TWO PIECES OF SOCIAL LEGISLATION; BOTH ORIGINATED WITH THE MDB BUT --NOT ATYPICALLY--WERE FIRST BLOCKED AND LATER REFORMULATED IN WHOLE OR IN PART BY THE GOVERNMENT AND ARENA; BOTH WOULD HAVE BEEN PASSED BY SIMPLE CONGRESSIONAL MAJORITY IN THE NEAR FUTURE, THOUGH PERHAPS NOT IN THE EXACT FORM THEY HAVE NOW ASSUMED. THE FIRST,

NOW DECREE-LAW 1534, GUARANTEES TO TENANTS OCCUPANCY OF THEIR DWELLINGS BEYOND THE TERMINAL DATE OF RENT CONTRACTS, FOR PERIODS UP TO TWO YEARS, VARYING ACCORDING TO LENGTH OF PRIOR TENANCY AND GOVERNED BY LIMITS ON RENT INCREASES. THE PRACTICAL RESULT IS TO DELAY,

BUT NOT ELIMINATE, THE SHARP INCREASES IN RENTS WHICH TYPICALLY OCCUR EACH TIME A CONTRACT BECOMES LIABLE TO RENEGOTIATION. THE SECOND MEASURE, NOW DECREE-LAW 1535, MAKES SEVERAL ALTERATIONS IN THOSE SECTIONS OF LABOR LEGISLATION GOVERNING PAID VACATIONS, THE BASIC CHANGE BEING AN INCREASE IN VACATION TIME FOR WORKERS FROM 20 TO 30 DAYS,

WITH RIGHT OF CONVERSION INTO CASH OF UP TO 10 DAYS' HOLIDAY TIME.
THE MEASURE WAS DESCRIBED BY LABOR MINISTER PRIETO AS A "PRESENT TO THE
WORKERS ON THE DAY (MAY 1) INTERNATIONALLY DEDICATED TO THEM".

5. COMMENT: THE GOVERNMENT'S ONE SUBSTANTIAL CONCESSION ON THE JUDICIAL REFORM PACKAGE, I.E., THE MAINTENANCE OF THE TRIBUNAIS DE ALCADA, WAS NOT A CONCILIATORY GESTURE TOWARD THE OPPOSITION AS SUCH, BUT THE RETHINKING OF A TECHNICAL MEASURE WHICH MORE THAN ANY OTHER SINGLE PROVISION OF THE REFORM HAD DRAWN THE CRITICISM AND EVEN THE OUTCRY OF THE JUDICIAL CORPS AND LEGAL PROFESSION.

6. THE INCREASED AUTHORITY OF THE SUPREME COURT, A BODY WHOSE MEMBERS, THOUGH REGULAR JUDGES, ARE APPOINTED BY THE PRESIDENT, POTENTIALLY REDUCES IN SOME MEASURE THE INSULATION OF THE JUDICIAL SYSTEM FROM THE LIMITED OFFICIAL USE

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PAGE 04 BRASIL 02970 142214Z

EXECUTIVE. THE CREATION OF THE NATIONAL COUNCIL OF THE JUDICIARY (ALSO

STRONGLY OPPOSED BY THEM DB) FURTHER CENTRALIZES AN IMPORTANT MEANS OF CONTROL OF THE JUDICIARY IN BRASILIA, BUT AT THE SAME TIME TRANSFERS

MUCH OF THE DISTASTEFUL TASK OF POLICING AND SANCTIONING ERRANT JUDGES FROM THE EXECUTIVE TO REPRESENTATIVES OF THE JUDICIARY ITSELF.

7. PERHAPS THE MOST STRIKING THING ABOUT THE JUDICIAL REFORM IS THE LIMITED SUPPORT IT HAS WITHIN THE LEGAL PROFESSION AS A WHOLE, WHOSE MEMBERS STILL RESENT THEIR LIMITED VOICE IN ITS PREPARATION. IN ADDITION TO ITS CENTRALIZING TENDENCIES, THE REFORM IS MOST FREQUENTLY CRITICIZED FOR CONCENTRATING ON THE UPPER LEVELS OF THE JUDICIAL SYSTEM AND PROVIDING LITTLE RELIEF FOR THE GRAVE PROBLEMS OF THE CROWDED,

UNDERFUNDED AND INEFFICIENT LOWER COURTS WHERE THE GREAT MAJORITY OF LITIGATION TAKES PLACE.

8. THE TWO SOCIAL MEASURES PASSED BY PRESIDENTIAL FIAT ARE CYNICAL SUGAR-COATING, FOR THE MASS PUBLIC, DESIGNED TO NEUTRALIZE ANY BITTER SENSATION FROM THE POLITICAL REFORMS SOON TO COME, AND TO ENHANCE THE ACCEPTANCE OF EXCEPTIONAL POWERS BY DEMONSTRATING THAT THE PRESIDENT WHO WIELDS THEM CAN BE BENEVOLENT AS WELL AS STERN. IT IS NOT A NEW TECHNIQUE. WELL-TIMED CASSATIONS OF OFFICIALS ON GROUNDS OF CORRUPTION HAVE BEEN SUED BEFORE, IN CONJUNCTION WITH HARDLINE POLITICAL MEASURES, TO DEMONSTRATE THE EVENHANDEDNESS OF EXECUTIVE ABSOLUTISM.
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